

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

FOREMAN ELECTRIC SERVICES, INC.,)
)
Plaintiff,)
)
v.)
)
MAMMOTH ENERGY SERVICES, INC.) Case No. _____
and COBRA ACQUISITIONS LLC,) (State Court Case No. CJ-2021-2103)
)
)
Defendants.)

NOTICE OF REMOVAL

TO THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

1. Notice. Pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446, Fed. R. Civ. P. 81 and LCvR 81.2, Defendants Mammoth Energy Services, Inc. (“Mammoth”) and Cobra Acquisitions, LLC (“Cobra,” and together with Mammoth, “Defendants”) remove this action to the United States District Court for the Western District of Oklahoma, which is the judicial district in which the action is pending. In support of this Notice, Mammoth and Cobra state as follows:

2. Attachment of State Court Papers. Pursuant to 28 U.S.C. § 1446 and LCvR 81.2, a copy of the Petition, which are the only state court papers filed as of the time of removal, and a copy of the docket sheet, are attached hereto as Exhibits 1 and 2.

3. The State Court Action. Plaintiff Foreman Electric Services (“Plaintiff”) filed this action against Mammoth and Cobra on May 13, 2021 in the District Court of

Oklahoma County, State of Oklahoma (Case No. CJ-2021-2103) (the “State Court Action”). To the knowledge of Mammoth and Cobra, as of the date hereof, neither has been served with the Petition or Summons.

4. Removal Is Proper. Removal to this Court from the District Court of Oklahoma County, State of Oklahoma, is proper pursuant to 28 U.S.C. §§ 1331, 1332(a), 1441, and 1446, in that: (a) it is a civil action founded on a claim or right arising under the laws of the United States; and (b) there is complete diversity of citizenship between Plaintiff and Defendants, and the amount in controversy exceeds \$75,000.

A. Federal Question Jurisdiction

5. Plaintiff’s RICO Claim Confers Federal Question Jurisdiction: Plaintiff’s first cause of action alleges violations of the Racketeer Influenced and Corrupt Organizations (“RICO”) Act, specifically 18 U.S.C. §§ 1962(c) and (d). Claims for violation of 18 U.S.C. §§ 1962(c) and (d) are a proper basis for removal jurisdiction. *See, e.g., Knight v. Mooring Capital Fund, LLC*, 749 F.3d 1180, 1183 (10th Cir. 2014); *Quahility Buds, LLC v. Correa*, 2019 WL 11542361, at *1 (E.D. Okla. 2019).

6. This Court Has Jurisdiction over the Remaining Claims: All of Plaintiff’s claims alleged in the Petition arise from the same common nucleus of operative facts. *See United Mine Workers v. Gibbs*, 383 U.S. 715, 725-26 (1966). The Court therefore has jurisdiction over the remaining claims based on supplemental jurisdiction. *See Diaz v. Paul J. Kennedy L. Firm*, 289 F.3d 671, 675 (10th Cir. 2002) (affirming summary judgment disposition of RICO and state-law claims, where RICO was the “sole basis for federal jurisdiction” and District Court exercised supplemental jurisdiction over state-law claims).

7. Based on the foregoing, this action arises under the laws of the United States and may be removed to this Court without regard to the amount in controversy or the citizenship or residence of the parties pursuant to 28 U.S.C. §1441(a). *See Caterpillar, Inc. v. Williams*, 482 U.S. 386, 393 (1987).

B. Diversity Jurisdiction

8. Diversity of Citizenship Exists: Plaintiff is a Puerto Rico corporation with its principal place of business in Odessa, Ector County, Texas. Exhibit 1, Petition ¶ 1. Defendant Mammoth is a Delaware corporation with its principal place of business in Oklahoma City, Oklahoma. *Id.* ¶ 2. Defendant Cobra is a Delaware limited liability company with its principal place of business in Oklahoma City, Oklahoma. *Id.* ¶ 3.

9. Plaintiff Alleges Damages Exceeding \$75,000. In the Petition, Plaintiff specifically states that the damages sought “exceed \$75,000.” *See, e.g., id.* ¶ 76.

10. Removal Based on Diversity Jurisdiction Is Proper: Because Mammoth and Cobra have not been “properly joined and served as defendants,” removal based on diversity jurisdiction is proper pursuant to 28 U.S.C. § 1441(b). *See, e.g., Magellan v. Zurich Am. Ins. Co.*, 228 F. Supp. 3d 1257, 1260-61 (N.D. Okla. 2017); *cf. Woods v. Dr Pepper Snapple Grp., Inc.*, 2020 WL 917284, at *4 (W.D. Okla. Feb. 26, 2020) (acknowledging ability of in-state defendant to remove prior to service).

C. The Removal Is Timely and Procedure Is Proper

11. Removal Within Thirty Days. This Notice of Removal is timely under 28 U.S.C. § 1446(b) because Defendants have not yet received service of summons, and the 30-day period provided for in 28 U.S.C. § 1446(b) has not expired.

12. Notice of Filing. Written notice of the filing of this Notice of Removal will be given promptly to Plaintiff, and a copy of the Notice of Removal will be filed with the Clerk of the District Court of Oklahoma County, State of Oklahoma, as provided by 28 U.S.C. § 1446(d).

13. Oklahoma County Is Located Within This District. Removal to this Court is proper under 28 U.S.C. § 1441(a) because the District Court of Oklahoma County, State of Oklahoma, is located within this District. 28 U.S.C. § 116(c).

WHEREFORE, Defendants Mammoth and Cobra remove this action to this Court and invoke this Court's jurisdiction.

Respectfully submitted,

/s/ Lance E. Leffel

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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2021, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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/s/ Lance E. Leffel